

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Warren E. Johnson Companies,
d/b/a Johnson Commercial Agents,

Plaintiff,

v.

ORDER

Civil No. 10-196(MJD/RLE)

Unified Brand, Inc., f/k/a
Foodservice Companies,

Defendant.

The above-entitled matter comes before the Court upon Plaintiff's objection to the Report and Recommendation of Chief United States Magistrate Judge Raymond L. Erickson dated June 8, 2010. Plaintiff objects to that portion of the Report and Recommendation that recommends that this Court dismiss claim 1 with prejudice and dismiss that portion of claim 2 that asserts a claim for breach of implied covenant of good faith and fair dealing by terminating the Agreement.

Pursuant to statute, the Court has conducted a de novo review of the record. 28 U.S.C. § 636(b)(1); Local Rule 72.2(b). Based on that review the Court will adopt the Report and Recommendation dated June 8, 2010, with

the exception of footnote 5. The deadline to file amended pleadings in this case has not yet been determined, and Plaintiff should have the opportunity to file a formal motion to amend the Complaint as to claim 1.

IT IS HEREBY ORDERED that Defendant's Motion to Dismiss [Doc. No. 5] is GRANTED. Claim 1 is dismissed without prejudice and Claim 2, to the extent Plaintiff asserts a claim for breach of implied covenant of good faith and fair dealing by terminating the Agreement, is dismissed with prejudice.

Date: August 4, 2010

s/ Michael J. Davis

Michael J. Davis

Chief Judge

United States District Court

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